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EXAMINER

SILVER, DAVID

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/747,967
Filing Date: December 29, 2003
Appellant(s): OULD-BRAHIM, HAMID

Colin Climie (Reg. No. 56,036)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20th day of August, 2008 appealing from the Office action mailed 24th day of January, 2008.

Art Unit: 2128

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 21-22 remain pending in the application.

Claims 1-20, as originally filed, were cancelled.

Claims 21 and 22 were subsequently introduced as new claims.

Claims 21 and 22 have been rejected.

Claims 21 and 22 are being appealed.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Withdrawn rejection. See below.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The arguments presented on page 7-8 of the Appeal Brief have been

Art Unit: 2128

fully considered. Upon further reconsideration, and in view of the most recent USPTO policy with respect to 35 U.S.C. § 101, the arguments are persuasive and the rejections are withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,473,599	Li et al	12-1995
US 20040037279 A1	Zelig et al	02-2004

Art Unit: 2128

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9.1 Claims 21-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Zelig et al. **(US**

20040037279 A1).

Zelig discloses: 21. An intermediate node in a multihop pseudo-wire comprising:

a forwarder for: terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said forwarder; originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, said attachment individual identifier associated with said forwarder **(forwarding logic ... Fig 1, 2 (item 34 "forwarding engine") and Figs' descriptions; individual identifier ... Fig 4 5 and their descriptions).**

Zelig discloses: 22. An intermediate node in a multihop pseudo-wire comprising:

Art Unit: 2128

a first forwarder for terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said first forwarder; and a second forwarder for originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, an attachment individual identifier associated with said second forwarder **(forwarding logic ... Fig 1, 2 (item 34 "forwarding engine") and Figs' descriptions; individual identifier ... Fig 4 5 and their descriptions; the figure has at least two routers, each of which has a first forwarder logic and second forwarder logic.)**.

9.2 Claims 21-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anthony J. Li et al. **(US 5,473,599)**.

Li discloses: 21. An intermediate node in a multihop pseudo-wire comprising:
a forwarder for: terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said forwarder; originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, said attachment individual identifier associated with said forwarder **(col: 8 line: 19-23; col: 2 line: 16-30)**.

Li discloses: 22. An intermediate node in a multihop pseudo-wire comprising:
a first forwarder for terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said first forwarder; and a second forwarder for originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, an attachment individual identifier associated with said second forwarder **(col: 8 line: 19-23; col: 2 line: 16-30)**.

(10) Response to Argument

Art Unit: 2128

10.1 Background:

10.1.1 Since claims submitted on 11/24/2006, the claims included language which was interpreted as intended use and was not given patentable weight. See, for example, Final Office Action dated 1/9/2007 section 7, Final Office Action dated 9/6/07 section 11, Final Office Action dated 1/24/2008 section 11, Interview Summary dated 4/17/2008 paragraph 3.

10.1.2 Applicants have not established why they believe this matter should be given patentable weight, nor have they addressed the issue at all. In view of MPEP 2111.04, the recited intended use of the forwarder is not given patentable weight as it does not 1) require steps to be performed, nor 2) limit the claim to a particular structure. Specifically, stating the use of a forwarder does not limit the forwarder's structure. To simplify the example, claiming a "car for driving on a road with upside-down loops" is drawn to a car, wherein the language of "road with upside-down loops" is drawn to intended use. One can state that the upside-down loops add structure to the road; however, the road is not being given patentable weight, and neither are the upside-down loops because the driving (and everything that follows) is drawn to intended use.

10.2 Applicants argue:

10.2.1 "The Applicant submits that the pseudo wires discussed in Zelig are point-to-point and "full mesh" [...] and that multihop pseudo wires are not considered by Zelig." (Remarks: page 9)

10.2.2 "Since, the Applicant submits, Zelig does not disclose or suggest terminating a first segment of a multihop pseudo-wire and originating a second segment of the same multihop pseudo-wire as required by claim 21, then Zelig cannot anticipate an intermediate node in a multihop pseudo-wire having the functional limitations recited in claim 21. Applicant submits that the Examiner has erred in rejecting, as anticipated by Zelig, claim 21." (Brief: page 9 bottom to page 10 top; emphasis by Examiner)

10.2.3 "The Applicant submits that the Examiner has not appropriately indicated where Li has disclosed or suggested a node comprising a forwarder for terminating a first segment of a multihop pseudo-wire as required by claim 21. Similarly, the Examiner has not appropriately indicated

Art Unit: 2128

where Li has disclosed or suggested a node comprising a forwarder for originating a second segment of a multihop pseudo-wire as required by claim 21. Applicant submits that the Examiner has erred in rejecting, as anticipated by Li, claim 21." (Brief: page 10 bottom to page 11 top)

10.3 **Examiner Response:**

10.3.1 Regarding subsection 1 and 2 *supra*, "multihop pseudo-wires" are not necessitated by the claim language. Furthermore, Applicants have provided a general allegation stating that point-to-point and "full mesh" are different than multihop, without providing support for such allegations. The statement in subsection 1 *supra* amounts to, at best, a conclusionary general allegation of patentable difference without support or reasoning. Furthermore, as previously set-forth and never argued, or even addressed, the above-emphasized portion (within subsection 2 *supra*). Applicants state that the emphasized language is a "functional limitation". This is respectfully disagreed-with. The claim language recites: "a forwarder for: terminating a first pseudo-wire segment [...]; originating a second pseudo-wire segment [...]". These are not functional limitations as they are drawn to intended use and non-functional descriptive matter (as it does not add nor limit the claim by function). Specifically, the forwarder has an intended use **for** terminating and originating. The forwarder is not limited to this function, as the forwarder does not actually terminate, nor originate a pseudo-wire segment. Accordingly, Applicants' arguments are moot. See MPEP 2111.04.

Nevertheless, even if patentable weight was given to the claim limitation, attention is respectfully drawn to, for example, **(paragraph 53)**, which discloses, that a forwarder (forwarding engine) receives a data-packet on one of its ports, which can be virtual (terminating pseudo-wire), and then forwarding the data packet via encapsulating through virtual connections (originating pseudo-wire segment). The pseudo-wires segments being equivalent to the virtual ports / virtual connections (referred to by reference as PWs, which is an acronym for "pseudo-wire" (defined in para 0009 of reference).

Art Unit: 2128

10.3.2 Regarding subsection 3 *supra*, to not belabor the issue, patentable weight is not given to the intended use for the reasons set-forth above and in view of MPEP 2111.04. The forwarder correlates to the disclosed "router" / "virtual router" which are disclosed on **(col: 8 line: 19-23; col: 2 line: 16-30)**. A router inherently has a terminating end (where it receives data) and an originating end (from which data is routed to the next destination).

10.4 **Examiner Note:** The arguments on page 11 to middle of page 12 are moot because the 35 U.S.C. § 101 rejection has been withdrawn.

10.5 **Applicants argue:**

10.5.1 "Claim 22 requires a first forwarder and a second forwarder. The Examiner indicates that "the figure has at least two routers, each of which has a first forwarder logic and second forwarder logic." (last sentence fragment of section 15.) It is unclear which figure in Zelig to which the Examiner is referring in the cited sentence fragment. FIG. 6 of Zelig illustrates three routers 96, but there is no disclosure of the routers having "a first forwarder logic and second forwarder logic." Furthermore, the virtual bridges 94 and the routers 96 are not disclosed as being connected by pseudo-wires. FIG. 1 of Zelig illustrates three virtual bridges 24, but the structure of a representative virtual bridge 24 illustrated in FIG. 2 only shows a single forwarding engine 34.

Since, the Applicant submits, Zelig does not disclose or suggest an intermediate node in a multihop pseudo-wire comprising a first forwarder for terminating a first pseudo-wire segment and a second forwarder for originating a second pseudo- wire segment as required by claim 22, then Zelig cannot anticipate a node having such a first forwarder and a second forwarder.

Applicant submits that the Examiner has erred in rejecting, as anticipated by Zelig, claim 22."

(Brief: page 12 to 13)

10.6 **Examiner Response:**

Art Unit: 2128

10.6.1 Reviewing Figure 6 and associated texts reveals two "Virtual Bridge" elements are, in fact, forwarding engines. See, for example, **(para 0036)** which discloses: "a forwarding engine, coupled to the multicast server and configured to serve as a virtual bridge". Further review would show explicitly that a "Virtual bridge 24 comprises a forwarding engine 34, having real ports connecting to Ethernet interfaces 30 or point-to-point PWs 31, and virtual ports connecting to VPLS PWs 26." **(para 0050)**. Therefore, the two virtual bridge bridges displayed in the Figure correlate to the claimed first and second forwarder logic, The logic further has the associated pseudo-wire segments (PWs).

10.7 **Applicants argue:**

10.7.1 "The Applicant submits that the Examiner has not appropriately indicated where Li has disclosed or suggested a node comprising a first forwarder **for terminating a first segment of a multihop pseudo-wire** as required by claim 22. Similarly, the Examiner has not appropriately indicated where Li has disclosed or suggested a node comprising a second forwarder **for originating a second segment of a multihop pseudo-wire** as required by claim 22. Applicant submits that the Examiner has erred in rejecting, as anticipated by Li, claim 22." (Remarks: page 13 bottom to page 14 top; underlined emphasis is original; bold emphasis by Examiner)

10.8 **Examiner Response:**

10.8.1 Applicants' remarks are conclusionary, at best, and amount to a general allegation of patentability. Furthermore, the elements argued are not given patentable weight for the above-mentioned reasons which equally apply to claim 22. Specifically, the Examiner-emphasized portions (bold) are not given patentable weight as they are drawn to intended use, and do not further limit the structure.

10.9 **Examiner Summary:**

Art Unit: 2128

10.9.1 Applicants are arguing features which were repeatedly indicated as not being given patentable weight.

10.9.2 No substantial argument was made otherwise.

10.9.3 The features are drawn to intended use and non-functional descriptive material and do not further limit the structure.

10.9.4 Even if those features were given patentable weight, the features would still be unpatentable as the references anticipate those limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/ DAVID SILVER / 10/15/2008

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Art Unit: 2128

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